

August 25, 2017

VIA ELECTRONIC FILING

Ms. Jocelyn Boyd, Chief Clerk/Administrator  
Public Service Commission of South Carolina  
Synergy Business Park, Saluda Building  
101 Executive Center Drive  
Columbia, SC 29210

Re: **Nancy Hammack v. Duke Energy Carolinas, LLC & Piedmont  
Natural Gas Company, Inc.**  
Docket No. 2017-229-EG

Dear Ms. Boyd:

Enclosed for filing please find Duke Energy Carolinas, LLC's Motion for Judgment as a Matter of Law and Memorandum in Support and Request to Hold Deadlines and Hearing in Abeyance. By copy of this letter we are serving the same on the parties of record. Should you have any questions, please contact me.

Yours truly,



Frank R. Ellerbe, III

FRE:tch

Enclosures

cc/enc: Randall Dong, Hearing Examiner (via email)  
Nancy Hammack (via email and US Mail)  
Jeffrey M. Nelson, Esquire (via email and US Mail)  
James H. Jeffries, IV, Esquire (via email and US Mail)  
Scott M. Tyler, Esquire (via email and US Mail)  
Jeremy C. Hodges, Esquire (via email and US Mail)  
Heather S. Smith, Deputy General Counsel (via email)  
Rebecca J. Dulin, Senior Counsel (via email)  
Kim H. Smith, Regulatory Affairs (via email)

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**Docket No. 2017-229-EG**

<b>In re:</b>	)	
	)	
<b>Nancy Hammack,</b>	)	<b>DUKE ENERGY CAROLINAS,</b>
<b>Complainant/Petitioner,</b>	)	<b>LLC’S MOTION FOR</b>
	)	<b>JUDGMENT AS A MATTER OF</b>
<b>v.</b>	)	<b>LAW AND MEMORANDUM IN</b>
	)	<b>SUPPORT AND REQUEST TO</b>
<b>Duke Energy Carolinas, LLC and Piedmont</b>	)	<b>HOLD DEADLINES AND</b>
<b>Natural Gas Company,</b>	)	<b>HEARING IN ABEYANCE</b>
<b>Defendants/Respondents.</b>	)	
	)	

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Duke Energy Carolinas, LLC (“DEC” or the “Company”) respectfully moves for an order granting it judgment as a matter of law in the above-referenced docket pursuant to S.C. Code Ann. §58-27-1990 and 10 S.C. Code Regs. 103-829 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (the “Commission”). As explained below, there are no genuine issues as to any material fact and the Company is entitled to judgment as a matter of law in this complaint proceeding.

This motion and memorandum is based upon the the application of South Carolina and United States statutory and case law, the Commission’s regulations as well as the attached affidavits and materials submitted in this docket. The Company also requests that the filing deadlines for all parties and the hearing date be held in abeyance until this Motion is resolved.

**BACKGROUND**

Nancy Hammack (“Hammack”) filed a complaint with the Commission on July 13, 2017, requesting that DEC remove the AMR Smart Meter (“AMR”) from her residence located at 111 Arabian Way, Simpsonville, South Carolina (the “Residence”). Hammack further requests that

DEC replace the AMR with an electromechanical analog meter with no electronics at no cost or expense to her. Hammack alleges the Smart Meter was installed without her knowledge or consent and that the presence of the AMR impacts her health.

Beginning in 2002, DEC exchanged all non-communicating analog meters with either a digital Automatic Meter Reading meter or an analog meter retrofitted with a radio transmitter inside the meter (collectively “AMR Meters”). Moreland Affidavit ¶ 5. The AMR Meters allow DEC to gather kWh usage from the meters via a low-power radio frequency signal (900 MHz RF) that is read by equipment installed in DEC’s trucks as the meter readers drive by the location. Moreland Affidavit ¶ 5. DEC’s records indicate that an AMR Meter was installed at the Residence on October 6, 2003 (meter number 16888885). Smith Affidavit ¶ 6; Moreland Affidavit ¶ 5. Ms. Hammack was not the customer of record at that time. DEC records indicate that service was established in the name of Nancy Hammack effective November 30, 2006. No changes have been made to the meter since it was installed in October of 2003 and the meter has been read monthly via the radio transmitter since installation Smith Affidavit ¶ 7.

As a provider of electric service, DEC provides all electric meters and makes the determination of the type of meter to install for various needs. DEC’s service regulations, approved by this Commission, control the manner of the Company’s provision of electric service and reserve to the Company the right to install meters, including meters which can be read “remotely using radio frequency or other automated meter reading technology.” Smith Affidavit ¶ 8. Customers do not have the right to dictate the style, manufacture, or other specifications relating to the type of meter used by DEC, or its method of reading meters. Notwithstanding DEC’s right to determine the equipment it employs, DEC has offered options to Ms. Hammack in an effort to address her concerns. DEC has offered to allow Hammack, at her expense, to

move the delivery point of the meter to another location on her property and DEC would install a meter in the new or relocated base. Moreland Affidavit ¶ 7. Ms. Hammack has also been informed about the opt-out option which was approved by the South Carolina Commission on November 17, 2016 in Docket 2016-354-E and will be available in late fall of 2017.

### **ARGUMENT**

There is no material fact in dispute in this case. Service to the residence is being provided in accordance with the Company's service regulations as approved by this Commission. In addition, the meter being used to measure service to Hammack is in compliance with applicable regulations of the Federal Communications Commission ("FCC"). Accordingly, DEC is entitled to judgment in its favor as a matter of law.

#### **1. Compliance with Service Regulations.**

As contemplated by its Service Regulations, DEC made the determination of what type of meter would be installed at the Residence occupied by Ms. Hammack. Section VII of the Service Regulations provides that DEC will furnish all meters for the measurement of service. Section VIII of the Service Regulations provides that DEC may choose to read meters "remotely using radio frequency or other automated meter reading technology." These Service Regulations were approved by the Commission by Order No. 2010-79 in Docket No. 2009-226-E. The Commission has broad authority to regulate the manner in which DEC, as an electrical utility, provides service to its customers. See S.C. Code Ann. §§58-27-140, 58-27-820. In this case the Commission has approved Service Regulations that allow DEC to install remote meter reading devices in order to provide service to customers more efficiently. DEC's provision of service, including the way in which electricity use is measured, is in accordance with the approved Service Regulations and DEC is entitled to judgment as a matter of law.

## 2. Meter Compliance

The electric meter serving the Residence at issue is in compliance with FCC standards and the Commission's regulations. The meter installed at this location uses a 900 MHz radio frequency and has been tested and complies with applicable FCC rules and guidelines. Moreland Affidavit ¶ 6.

Nearly every household device that is powered by electricity emits electromagnetic frequencies in some amount. The meter installed at the Residence emits a fraction of the types of radio frequency emissions that come from cellular phones, microwave ovens, and many other household devices in use today. The FCC sets exposure limits for all these types of devices, including electric meters, and each device must be certified as meeting the FCC rules. The FCC classifies devices into three categories – intentional radiators, unintentional radiators, and incidental radiators.

- The typical devices that fall into the intentional radiator category include cordless telephones, remote control toys, garage door openers, wireless routers, baby monitors, and any mobile data devices such as cellular phones and tablets. Any communicating meter (AMR or AMI) also falls into this category.
- Unintentional radiators are devices that generate RF signals, but are not intended to emit RF. These include such things as personal computers, printers, automobile dashboard electronics, radio receivers, televisions, and any other devices that have an internal “clock” within the device.
- Incidental radiators are devices that generate RF energy during the course of their operation, but are not designed to generate or emit RF energy. This category would include automobile ignition systems, ceiling fans, vacuum cleaners, electric shavers, and mechanical light switches.

FCC standards for intentional and unintentional radio emissions and safety related to RF exposure, Parts 1 and 2 of the FCC's Rules and Regulations (47 C.F.R. 1.1307(b), 1.1310, 2.1091, 2.1093), govern the certification and design of all the devices mentioned above including

communicating meters. The meter serving the Residence is in compliance with FCC standards and the Commission's regulations. Moreland Affidavit ¶ 6.

DEC has confirmed that the meter has been tested in accordance with Title 47, Part 15 of the CFR and has been certified by the FCC. Moreland Affidavit ¶ 6. To allow Hammack to move forward with her claim would be an inappropriate use of time and resources of the Commission and the Company. DEC is entitled to judgment in its favor as a matter of law.

### **3. Relief Requested**

The Commission is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly. *Kiawah Property Owners Group v. Public Service Com'n*, 359 S.C. 105, 597 S.E.2d 145 (Sup. Ct. 2004). The Commission's jurisdiction is limited to the adjudication of any claim regarding any act or omission by an electrical utility allegedly in violation "of any law which the commission has jurisdiction to administer or of any order or rule of the commission." S.C. Code Ann. § 58-27-1940 (Supp. 2014).

Hammack asserts in her complaint that her health is being impacted by RF emissions. These types of concerns are more appropriately regulated through FCC rules, standards, and guidelines. Ms Hammack at the Residence in this matter has been served for over 10 years with an AMR Meter which uses an RF transmission. Furthermore, DEC offered the account holder the options that are available for metering pursuant to the Commission's approved tariff and regulations and Ms. Hammack declined those options. Under these facts Hammack has no basis for relief and judgment should be granted to DEC and this case dismissed.

## **CONCLUSION**

DEC is entitled to judgment as a matter of law based on the information and affidavits submitted in this case. The DEC investigation determined that the meters are in compliance with the FCC standards and Commission regulations. Therefore, there is no genuine issue as to any material fact and DEC is entitled to judgment as a matter of law.

WHEREFORE, Duke Energy Carolinas moves the Commission to grant it judgment as a matter of law and dismiss the Complaint with prejudice, hold the testimony deadlines for all parties and the hearing in abeyance pending resolution of this motion, and requests such other relief as the Commission deems just and proper.

Dated this 25th day of August, 2017.

Rebecca Jean Dulin, Senior Counsel  
Duke Energy Corporation  
Capital Center Building  
1201 Main Street, Suite 1180  
Columbia, South Carolina 29201  
Phone: 803-988-7130  
[Rebecca.Dulin@duke-energy.com](mailto:Rebecca.Dulin@duke-energy.com)

and

Sowell Gray Robinson Stepp & Laffitte, LLC

s/Frank R. Ellerbe, III  
Frank R. Ellerbe, III  
William H. Jordan  
Post Office Box 11449  
Columbia, SC 29211  
Phone: 803-929-1400  
[Fellerbe@sowellgray.com](mailto:Fellerbe@sowellgray.com)  
[Wjordan@sowellgray.com](mailto:Wjordan@sowellgray.com)

Attorneys for Duke Energy Carolinas, LLC

**DOCKET NO. 2017-229-EG**

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below **Duke Energy Carolina, LLC's Motion for Judgment as a Matter of Law and Memorandum in Support and Request to Hold Deadlines and Hearing in Abeyance** in the foregoing matter by placing copies of same in the U.S. Mail addressed as follows:

Jeremy C. Hodges, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201  
Jeremy.hodges@nelsonmullins.com

Scott M. Tyler, Esquire  
Moore & Van Allen PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, NC 28202-4003  
scotttyler@mvalaw.com

*Ioni C. Hawkins*